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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/550,144

11/18/2005

Christian Auf der Heide

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EXAMINER

NELSON, MICHAEL B

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

09/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/550,144	Applicant(s) AUF DER HEIDE ET AL.	
	Examiner MICHAEL B. NELSON	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-52 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 27-52 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/21/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 27-31, 35-39 and 49-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Krehalon (WO 92/10411).

Regarding claim 27, Krehalon discloses a sausage containing sausage casing which is closed at opposite ends and which has an opening element, 3, near one end (See Abstract and Fig. 1).

Regarding claims 28-31, 35-39 and 49-52, Krehalon discloses all of the limitations as set forth above. Additionally, Krehalon discloses a sausage casing wherein the opening element, which is near one of the opposing ends, tears completely around the sausage (Fig. 2) in a transverse direction. The opening element is disclosed as being glued onto the casing (See Abstract, bonding agent) and fixedly bonded to the casing with a free, tapered, arrow-pointed, grip end (Page 5, L15-23). The opening element is designed so that, when pulled, the opening element has a stronger bond with the casing than the casing has with itself (i.e. tears) (Page 5, L24-35). The opening element is curved around the sausage casing with a roughly rectangular shape and with rounded edges (i.e. the oblique angles at the arrow point end) (Fig. 1).

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Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krehalon (WO 92/10411) as applied to claim 27 above, and further in view of Tesch (DE 26 55 253), see machine translation.

Regarding claims 32-34, Krehalon discloses all of the limitations as set forth above. Krehalon does not disclose the use of perforations to weaken the casing in the area where it is meant to be torn. Tesch discloses a transverse sausage casing opening system which uses perforations to ease the tearing of the casing (See paragraph 5, Fig. 6).

The inventions of both Krehalon and Tesch are drawn to the field of sausage casings with opening means and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the casing area directly underneath the opening element of Krehalon by weakening it with perforations as taught by Tesch for the purposes of imparting greater ease of tearing.

7. Claims 40-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krehalon (WO 92/10411) as applied to claims 27 and 35 above, and further in view of Yoshikawa et al. (U.S. 4,408,697).

Regarding claims 40-48, Krehalon discloses all of the limitations as set forth above. Krehalon does not disclose a rigid opening member with a damaging tool. Yoshikawa et al. discloses a system for opening a food container via tearing along a weakened area (cutting guide) (C2, L40-C4, L5). The system includes a rigid opening element which further includes a metal damaging tool to initiate the tearing in the weakened areas and thereby assist in the opening of the container (Fig. 19 and 20 and C6, L30-67).

The inventions of both Krehalon and Yoshikawa et al. are drawn to the field of food containers with tearable openings and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the opening element of

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Krehalon by using a damaging tool as taught by Yoshikawa et al. for the purposes of imparting greater ease of tearing through initiating the tear in the base material.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL B. NELSON whose telephone number is (571) 270-3877. The examiner can normally be reached on Monday through Thursday 6AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MN/
09/03/08

/Carol Chaney/
Supervisory Patent Examiner, Art Unit 1794